1950 **K** **File No.** O. Misc. 150
Part II

Legal Dept-
A **BRANCH**

Subject:— Miscellaneous opinions

K 13 E

File No. O. Misc. 150
Pt- II

Gen. 194 a.

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C O N T E N T S.

Legal Department File No. O. Misc. /50-II. Part

No.	R.I./O.No.	Subject	pages.
		Opinions - Miscellaneous correspondence dealt with in "A" Branch.	
1).	O.No. 15717/11-11-50	Re. Recovery of Govt's claim from M/S. Padma Publications which firm has gone into liquidation.	1 - 2.
2).	O.No. 15177/1-11-50	Re. Building known as (Chiplunkar Wada" in Jawhar State and occupied by one Shri Tendulkar on a nominal monthly rent of Rs. 6-8-0 by a resolution passed four days prior to integration by State Executive Committee Jawhar of which Shri T. himself was a leading member. Question whether action of the E. Engineer Thana Division in fixing the rent of the building at Rs. 65 p.m. after integration is in order.	3 - 4.
3).	O.No. 16117/17-11-50	Question regarding the custody of the Khata Nihaya Sadar Adalat records of the Baroda Privy Council after merger.	5 - 6.
4).	O.No.16599/25-11-50	Re. Forests contract for felling trees.	7 - 8.
5).	O.No. 16650/27-11-50	Re. Industrial School Bijapur constitution of a building Construction for the starting of - Question regarding payment of compensation to the contractors for additional work which was not mentioned in the contract agreement.	
6).	O.No.18411/29-12-50	Questions regarding execution of mortgage bonds in respect of loans granted by the Director of Rehabilitation , Govt. of B'bay Procedure to be followed in respect of - (Misc. Pl. see R.L. .'s No. 7302 dated 8-5-51 O. transfer of property/51)	
7).	O.No. 15754/13-11-50	Re. Drawing of free ration by a displaced person from Pakistan on a false declaration that he had no means to buy his daily ration Question regarding prosecution of - for cheating Govt.	
8).	O.No.16948/30-11-50	Re. Amount of Rs 1,25,000/- advanced by Baroda Govt. to the peace Committee for compensating the sufferers in the Hindu Muslim Riots ofVase in the Petlad Taluka which formed part of the merged Baroda State Question regarding repayment of - to the Baroda Govt.	

R/I/O.No.	Subject	pages
	Question whether the Peace Committee of whose instance the advance was sanctioned & would ultimately be responsible for the repayment of the advance	17 - 18.

SW 15/16

B. C. 13/6
5 copies.

Office of the R.L.A.

It is ascertained from the office of the Court Receiver and Liquidator, High Court, Bombay , that claims have not been invited so far in the matter of liquidation of Messrs. Padma Publications. The Educational Adviser may, therefore, as this stage, address a letter to the Court Receiver and Liquidator and inform him of Government's claim. A regular claim with an affidavit will have to be lodged in due course when claims are invited by the Liquidator who will give notice of it to all the creditors.

P.M.Lad
8-11.
Remembrancer of Legal Affairs.

U.R. to E.D. No. 15717 , dated the 11th November 1950.

S.C. 8/6

Office of the R.L.A.

The action taken by Executive Engg Engineer demanding the standard rent of Rs. 64 per month from Shri Tendulkar and demanding immediate possession from him would ~~h~~ not be in order. The proper course would be to recover the arrears of rent at the rate of Rs. 6-8-0 and to serve immediately month's notice terminating the tenancy and to evict him through Court after the expiry of notice.

P.M.Lad

31-10

Remembrancer of Legal Affairs.

U.R. to P. W. D. No. 151777 dated the 1st Nov. 1950.

S.C. 8/6

Office of the R.L.A.

The records of the Khata Nihya Sadar Adalat form part of the records of the Baroda Privy Council which ceased to exist from 1-5-49. It is understood that since 1946 the Legal Remembrancer of Baroda had ceased to exercise con rol over the administrative work of the Baroda Privy Council as a separate office was created in that year for the prupose. The records of the Privy Council, therefore, did not form part of the record of theoffice of the Legal Remembrancer on the date of merger, and as such the office of the R.L.A. is in no way concerned with the records of the Khata Nihaya Sadar Adalat.

2. The best and most suitable course, however, appears to be to keep the records in the custody of the Rajdaftardar and authorise the Rajdaftardar to issue copies whenever asked for; provided the Rajdaftardar is to continue in office. Otherwise the District Court of Baroda would be the best repository.

P.H.Lad
16-11
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 16117 dated the 17th November 1950.

S.C. 8/6

Office of the R.L.A.

It appears that the condition imposed by the Government letter No. 4500-J dated 16th June 1950 that the Contractor should retain the best shoot on each stool is not relatable to any term of the contract. If so, the only course open to the Government would be to repudiate his right to fell and remove trees in the Kayalia forests which the Government conceded on the grounds of equity so that the x question might be decided by the Court.

P.M.Lad
24-11

Remembrancer of Legal Affairs.

U.R. to A. & F.D. No. 16599, dated the 25th November 1950.

S.C 8/6

Office of the R.L.A.

This case was discussed with D.S. (O.W.D.)

2. In the preamble of the agreement it is stated;

"We hereby tender for the execution of the Governor of Bombay of the work specified in the under-written memorandum within the time specified in such memorandum at the tendered rates specified in Schedule B (Memorandum showing items of work to be carried out) and in accordance in all respects with the specifications, designs, drawings and instructions in writing referred to in Rule 1 hereof and in Clause 13 of the annexed conditions of contract and agree that when materials for the work are provided by Government, such materials and the rates to be paid for them shall be as provided in Schedule A hereto.

It appears from this that the rates specified in Schedule B are in respect of works to be carried out, the specifications of which are mentioned in the drawings etc., clause 14 of the Contract provides for two kinds of additional work;

(I) Any additional work which the Contractor may be directed to do in the manner above specified as part of the work and this work is to be carried out by him (the Contractor) on the same conditions in all respects of which he agreed to do the main work and at the same rates as are specified in the tender for the main work.

(2) The additional work or altered work may include any class of work for which no rate is specified in this contract and the rates at which they are to be carried out would be the rates entered in the Schedule of Rates of the Division or at the rates mutually greed upon between the Engineer to charge and the Contractor whichever are lower.

The additional work which is to be paid for in the present case appears to fall under the second category forwhich the rates of the Division or the rates to be mutually agreed upon would require to be settled only if no rate is specified in

this contract. It appears from Schedule B that the rates for such additional work are specified therein but unfortunately it is stated that they are subject to the provisions of Clause 14 of the Contract Document. When the rates for the additional work were so specified in the Schedule what was necessary to be stated in the Schedule was that "those rates are in respect of additional work as provided in Clause 14, " instead of making them subject to the provisions of that Clause/ . This clause "subject to the provisions of clause 14 of the Contract Document" appears to have unnecessarily created difficulties in the way of interpretation . The P.W.D. may amend it as stated above, in respect of future agreements. Since the rates have been specified in the Schedule in respect of this additional work, those rates would be applicable and the Contractor would be entitled to claim payment as these rates only. The view taken by the P.W.D. is correct.

P.M?Lad
25-11

Remembrancer of Legal Affairs.

U.R. to P.W.D. NO. 16650 dated the 27th November , 1950.

S.C. 8/6

Office of the R.L.A.

The execution of mortgage bonds by the Camp Commandants and Estate Managers on behalf of the Director of Rehabilitation would be invalid and fresh mortgage bonds should be taken in such cases. The proposal that the Director of Rehabilitation should execute the mortgage bonds while sanctioning the loans and forward them to the Camp Commandants and Estate Managers to get them executed by the loanees while making payments is likely to create legal complications. The proper course would be to authorise the Camp Commandants and Estate Managers to execute such baonds on behalf of the Governor of Bombay.

P.M.Lad
28-2
Remembrancer of Legal Affairs.

U.R. to R.H.D. No. 18411 dated the 29th December 1950.

S.C. 8/6

Office of the R.L.A.

No Civil action would be possible as the penalty for false statement made in the application as stated therein is only disciplinary action and forfeiture of ration. It is possible to prosecute Shri Wadhomal for cheating but it does not appear worthwhile at this stage. The course suggested by Assistant Secretary, Rehabilitation Department may be followed.

P.M.Lad
8-11

Remembrancer of Legal Affairs.

U.R. to R.H.D. No. 15754 , dated the 13th November 1950.

S.C. 8/6

Legal Department.

It appears that on the 25th November 1947 there was a communal riot between Hindus and Muslims at Vaso in the Patlad taluka which formed par. of the merged state of Baroda. A Peace Committee with Durbar Gopaldas as the President was formed by the citizens. The proceedings of the Committee are not on the record and it is not clear whether it was formed at the instance of the BARODA State or by any official of the State. But the Peace Committee appears to have requested the Government of Baroda to sanction the grant of a sum of Rs. 1,25,000 for payment as compensation to the sufferers in the riot. This amount was sanctioned by the Government of Baroda by their Order No. (R) 19/4 dated the 21st October 1948. The order provided that the so-called loan was to be repaid in fifteen instalments. The method of repayment stated in the order was :-

(1) by a surcharge by the Vaso municipality on any passenger of motor bus services;

(2) by the enhancement of the house tax by the municipality;

(3) if the amount was not repaid by the above two methods, by recovery as an increase in land revenue.

It is then added that, if, after taking of the aforesaid measures, the amount was not recovered, then the liability for its repayment was on the President and members of the Peace Committee. This order is a x document of curious nature Although the Government of Baroda Act was in operation then and some form of a constitutional government was inexistence, it is not clear under what law this order was passed. There will be difficulties in construing this order as a contract It is obvious that no consideration passed from the Peace Committee. Its members were not obviously to be benefited personally. The amount was advanced for the payment of compensation to the sufferers in the communal riot. If any of the subjects of the Baroda Government suffered damage,

as the primary duty of Government itself to protect them. In Chicago v. Sturges (222 U.S. 215) the Supreme Court of the United States held that "primarily Government exists for the maintenance of social order. Hence it is the obligation of the Government to protect life, liberty and property against the conduct of the indifferent, the careless and the evil minded. In recognition of this supreme obligation is found the exertions of the legislative power which have as an end the preserveation of social order and the protection of the welfare of the public and of the individual." Various States in America have, therefore, passed legislative enactments for the purpose (see Cooley's constitutional Limitations, Vol. 1, 506). The Riot Act of 1 Geo 1 and other Acts are based in Engit England on the same principle. So far as India is concerned, various Police Acts contain similar provisions. It is not clear from the papers why the Vaso Peace Committee undertook the obligation of repaying the amount which was paid as compensation to sufferers in the riot. If the Committee undertook this liability on behalf of the Hindu community, the members of which were probably the offenders, the order of the Baroda Government making the Committee ultimately liable was contingent on the municipality and Government itself making efforts for the recompment of the amount by the methods specified in the order. The Vaso municipality was a statutory body and was presumably under the control of Government. EVen if that body railed to recover the amount in the manner stated in the order, it was the duty of the Government of Baroda to recover it in the manner provided in clause (iv) of the order. In view of the failure of the municipality as wel l as the Government of Baroda, it does not appear that the President and members of the Peace Committee are legally liable to repay the amount to the Bombay State as the successor of the Government of Baroda.

J.R.Dhurandar.

29-11

Additional Secretary to Go

U.R. to H.D. No. 16948 , dated the 30th November 1950.

S.C 8/6